

1 **NOT FOR PUBLICATION**

2
3
4
5
6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 In re Case No. 06-10002-A-7

9 VICTORIA L. LANDSEADAL

10 Debtor.

11 _____/
12 VICTORIA L. LANSEADAL,

Adv. No. 08-1025

13 Plaintiff,

14 vs.

15 VICTOR TOKACH,

16 Defendant.

17 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18 Trial in this matter was held September 3, 2009. Following
19 the trial, the court took the matter under submission. This
20 memorandum contains findings of fact and conclusions of law
21 required by Federal Rule of Bankruptcy Procedure 7052 and Federal
22 Rule of Civil Procedure 52. This is a core proceeding as defined
23 in 28 U.S.C. §157(b)(2)(I).

24 While the issues in this case are convoluted, the background
25 facts are fairly straightforward. Victoria Lanseadal
26 Rountree (the "Debtor" or "Landseadal") filed her chapter 7
27 petition on January 3, 2006. On or about October 28, 2000, she
28 and defendant Victor Tokach ("Tokach") were married. On

1 September 22, 2003, Tokach filed a Petition for Marital
2 Dissolution. The parties dispute the date of their separation,
3 with Landseadal asserting it was August 23, 2002, and Tokach
4 asserting it was August 30, 2003. On or about November 11, 2005,
5 dissolution of the marriage was granted in the state court
6 marital dissolution action.

7 Prior to the marriage, Landseadal had been employed by
8 Kaiser Permanente. She asserted that she was the subject of
9 harassment related to her employment in 1999 and was placed on
10 leave in about June 2001. She pursued a personal injury claim
11 because of the harassment and a related worker's compensation
12 claim. She also filed a claim for injuries suffered in an
13 automobile accident approximately June 2002. Landseadal settled
14 each of these claims prior to the time she filed bankruptcy and,
15 she asserts, after she separated from Tokach. Landseadal asserts
16 that she used all proceeds from the claims to pay expenses
17 related to the claims and other community expenses.

18 Landseadal filed her bankruptcy petition in January 2006.
19 By that time, her settlement proceeds had been all spent. She
20 scheduled no real property assets, and all her personal property
21 assets were exempted. She listed Tokach as a creditor for notice
22 purposes only on Schedule F. The chapter 7 trustee determined
23 that the case was a "no asset" case, and the case was closed with
24 no distribution to creditors.

25 Prior to the time the case was closed, Tokach had filed a
26 timely complaint to determine amount and dischargeability of
27 debts "pursuant to 11 U.S.C. § 523(a)(2), (4), (6), and (15)."
28 That complaint asserts that Tokach was defrauded by Landseadal;

1 that she obtained money by fraud or defalcation while acting in a
2 fiduciary capacity; that she obtained money by embezzlement; and
3 that she wilfully and maliciously injured him. He also asserts
4 as follows:

5 "64. The Divorce proceedings have not been concluded as of
6 the filing of this complaint. However a motion for relief
7 from the automatic stay has been filed requesting that the
8 divorce proceedings and all ancillary actions be allowed to
9 be completed in state court. Whether those proceedings are
concluded in state court or in the bankruptcy court, a
determination as to obligations between the spouses will be
determined [sic] regarding the division of marital property
and obligations.

10 65. Whatever obligations that are determined owing from
11 Defendant to Plaintiff should not be discharge [sic]
pursuant to § 523(a)(15)."

12 The prayer in that complaint filed by Tokach states:

13 "WHEREFORE, Plaintiff prays that this court render judgment
14 as follows:

15 1. That Defendant owes Plaintiff the amount according to
16 proof based on her diversion of funds, forging of checks and
removal of personal property ("Obligation").

17 . . .

18 6. That the obligation is not dischargeable in bankruptcy
pursuant to § 523(a)(15)."

19 The 2006 complaint was never litigated because Tokach failed
20 to pursue it. On September 13, 2006, the court entered an order
21 dismissing the adversary proceeding for failure to prosecute the
22 case. Subsequently, Landseadal obtained her discharge.

23 After that, Tokach asked the state court in the marital
24 dissolution proceeding to entertain his argument that he is
25 entitled to money from Landseadal. Initially, the state court
26 made "Findings and Order After Hearing" ruling against Tokach and
27 finding that the funds Landseadal received in satisfaction of her
28 worker's compensation case against Kaiser Permanente were her

1 separate property; that the funds she received in settlement of
2 her civil harassment and breach of privacy lawsuit against Kaiser
3 Permanente were her separate property; and that the funds she
4 received as a result of the automobile accident were awarded to
5 her as the injured spouse under Family Code § 2603. Further, the
6 court found that this was a short term marriage and that the
7 economic needs of the parties were such that Landseadal was not
8 working due to her disability.

9 Importantly, the state court also stated:

10 "Husband [Tokach] may still have issues regarding the
11 commingling of separate property funds with community
12 property and/or the date of separation of the marriage.
13 Therefore, Wife is ordered to account for the above-
14 described funds by specifying the amount received and
15 support the separate property integrity by appropriate
16 tracing methods."

17 Tokach moved for reconsideration, and as a result thereof,
18 the partial summary judgment that resulted from those findings
19 was set aside.

20 A case management conference in state court was set for
21 April 11, 2007. In the meantime, Landseadal came back to
22 bankruptcy court and filed an adversary proceeding "to determine
23 dischargeability of debt, for injunction, and for damages for
24 contempt of court." It is that adversary proceeding that led to
25 this trial.

26 There can be no question that to the extent Tokach has
27 claims based on Bankruptcy Code § 523(a)(2), (a)(4), or (a)(6),
28 those claims have been discharged. He filed a complaint to
29 determine dischargeability, and the complaint was dismissed for
30 failure to prosecute. Landseadal received her discharge under
31 chapter 7, discharging any claim arising from the kind of conduct

1 described in those sections.

2 Tokach's claim under § 523(a) (15) is somewhat more complex.

3 That section as amended in October 2005 states that a chapter 7

4 discharge does not discharge an individual debtor from any debt

5 "to a spouse, former spouse, or child of the debtor and not
6 of the kind described in paragraph (5) that is incurred by
7 the debtor in the course of the divorce or separation or in
8 connection with a separation agreement, divorce decree, or
other order of a court of record, or a determination made in
accordance with State or territorial law by a governmental
unit;"

9 What debts are within the scope of § 523(a) (15)? First,

10 domestic support obligations are debts described at § 523(a) (5).

11 Domestic support obligations are outside the scope of subsection

12 (a) (15). Domestic support obligations are defined at Bankruptcy

13 Code § 101(14) (A). There is no argument that any claim by Tokach

14 is a domestic support obligation.

15 Claims under (a) (15) must be to a spouse or former spouse.

16 Tokach is a former spouse.

17 The claim must have been incurred by the debtor (a) in the

18 course of a divorce or separation; or (b) in connection with a

19 separation agreement, divorce decree, or other order of the court

20 of record; or (c) a determination made in accordance with State

21 or territorial law by a governmental unit.

22 Here there was no separation agreement. There was no

23 divorce decree or other order of any court of record or any

24 determination by a governmental unit giving Tokach a claim

25 against Landseadal.

26 The marital dissolution proceeding between Tokach and

27 Landseadal is still pending. Landseadal's bankruptcy case has

28 been closed. The chapter 7 trustee was given notice of this

1 adversary proceeding and declined to participate. While Tokach
2 is enjoined by the discharge injunction in this case from
3 pursuing any claims against Landseadal based on any of the
4 elements of § 523(a)(2), (4), or (6), he is not barred from
5 asserting in the course of the marital dissolution any claims he
6 may have under § 523(a)915).

7 While the parties to this adversary proceeding spent a great
8 deal of time arguing the legal issues, they failed to come
9 forward with any facts that describe the obligations of
10 Landseadal to Tokach, if any, that would allow this court to
11 conclude whether there are any obligations under § 523(a)(15).
12 That determination is better left for the family law court.

13 What is crystal clear is that to the extent Tokach seeks to
14 make claims in the family court based on the allegations in his
15 2006 complaint on the grounds of which he seeks to have an
16 obligation declared nondischargeable under § 523(a)(2)(A);
17 § 523(a)(4); or § 523(a)(6), such claims are barred and enjoined
18 by the discharge injunction in this chapter 7 case.

19 Any legitimate claims under § 523(a)(15) are not barred.

20 The court will issue a separate order.

21 DATED: February 5, 2010.

22 /S/

23 _____
24 WHITNEY RIMEL, Judge
25 United States Bankruptcy Court
26
27
28